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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

Case No. PT-2009-1445

CARLOS ARTURO CAZARES  
1211 W. Marshall Blvd.  
San Bernardino, CA 92405

OAH NO.: 2012040758


Applicant for Psychiatric Technician License  
  
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on November 3, 2012.

IT IS SO ORDERED this 4<sup>th</sup> day of October, 2012.



Todd D'Braunstein, PT  
President

BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

CARLOS ARTURO CAZARES  
aka CARLOS MUNOZ

Respondent.

Case No. PT-2009-1445

OAH No. 2012040758

**PROPOSED DECISION**

On July 31, 2012; in San Bernardino, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Desiree Tulleners, Deputy Attorney General, Office of the Attorney General, represented complainant.

Steven Bassoff, Attorney at Law, represented respondent.

The matter was submitted on July 31, 2012.

**FACTUAL FINDINGS**

1. On March 26, 2012, Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Board of Vocational Nursing and Psychiatric Technicians of the State of California (Board), filed Statement of Issues No. PT-2009-1445 in her official capacity. Respondent filed a timely Notice of Defense.

2. On May 4, 2009, respondent submitted an Application for Psychiatric Technician Licensure to the Board. On March 29, 2011, the Board denied the application on the ground that respondent had been convicted of two driving under the influence offenses and one driving with a suspended license offense.

3. On August 4, 2009, in the San Bernardino County Superior Court, respondent pleaded guilty and was convicted of violating Vehicle Code section 23152, subdivision (a),

driving under the influence of alcohol, a misdemeanor, and section 14601.2, subdivision (a), driving when license suspended for a prior DUI conviction, a misdemeanor. The court placed respondent on probation for three years, and ordered him to pay fines and fees totaling \$1,703.00, enroll in and complete a Multiple Offender Program, and serve 60 days in county jail with credit for one day served.

4. The facts and circumstances of the offense according to the police report are as follows: On May 6, 2009, Officer Leon of the San Bernardino County Sheriff's Department was on patrol at about 3:00 a.m. when he observed a vehicle fail to make a stop before turning right against a red light. The officer initiated a traffic stop. Respondent was the driver. The officer detected the odor of an alcoholic beverage coming from the vehicle's interior and observed respondent's eyes were bloodshot and watery. Officer Leon asked respondent if he had been drinking. Respondent at first denied he had been drinking but then admitted he had had six beers. The officer had respondent perform a series of field sobriety tests and then had respondent provide a preliminary breath test, which disclosed a blood alcohol content of 0.12 percent. Based upon all the evidence, Officer Leon arrested respondent for driving under the influence of alcohol

5. On March 25, 2005, in the Riverside County Superior Court, respondent pleaded guilty and was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court placed respondent on probation for three years and ordered respondent to pay a fine of \$1,362.00 plus additional fees and assessments, and attend and complete a First Offender DUI Program.

Respondent committed the offense on January 19, 2005. According to his application, respondent had been drinking at a family dinner.

6. Respondent's convictions are of crimes substantially related to the qualifications, functions, and duties of a psychiatric technician.

7. Respondent is 53 years old and has one son. He has worked as a psychiatric technician assistant at the Lanterman Developmental Center for the last 12 years, and before that worked at Patton State Hospital as a psychiatric technician assistant and student assistant. At Lanterman, he works with people with developmental disabilities, usually adults. Recently, he was using animals as a method of therapy for his clients. He also helped his clients reach the Special Olympics, and worked in the area of special education. He has a psychiatric technician assistant certificate issued by the hospital and a CNA certificate.

8. Respondent testified that he has completed probation for his 2009 DUI offense. He paid the fines, attended the DUI classes and completed the program in 2010, and was under house arrest for 37 days, which allowed him to work and attend school. He also completed his 2005 probation. He admitted that he had been convicted of DUI in 1995, and revealed that conviction on his application.

Respondent testified that he talked to a special investigator with Lanterman about his arrest and conviction.

Respondent testified he took his last drink on March 6, 2009, the night that he was arrested. He stopped because he realized that he was then 53 years old and that drinking affected his life, it caused him nothing but trouble, and he had to stop. He did not attend AA meetings or do any other rehabilitation except for completing the court-mandated DUI course. He testified he learned from the course and particularly from other participants in the course how dangerous drinking and driving was. He indicated that he has friends and a therapist he can call if he needs support.

Respondent has been a psychiatric technician assistant for 24 years but learned that Lanterman will close in the near future and the position of psychiatric technician assistant will be phased out of the state system. Respondent testified he loves the field and in order to stay in and advance in it and find greater responsibilities, he decided to attend Cypress Community College and then obtain a psychiatric technician license. While attending college, he did his clinical work at Metropolitan and Atascadero.

While working at Lanterman for a period of time, he was in charge of the chaplain's office and he now attends a Catholic Church with his son.

9. Respondent submitted two letters in support of his application. Tammi Reed, MT-BC, is a music and rehabilitation therapist and has worked with respondent at Lanterman for several years. She described respondent as responsible, hard-working, thorough, thoughtful, firm yet supportive, friendly, and kind. She wrote that he develops good rapport with staff and clients, and he takes special time to help those who are going through difficulties. She noted that as he gave a tour of the Rustic Camp facility at Lanterman, she was impressed with his ability to communicate clearly and confidently as he described the program, the facility, the animals, and the features in this unique program where clients benefited from their interaction with animals. She added that respondent cared about the animals and made sure they were treated well.

Cathy Kisselburg, an Education Specialist at Lanterman, wrote that respondent has worked in her classroom for more than two years. She teaches students with mild to moderate developmental disabilities, autism, impulse control, deafness, and explosive issues. She indicated that respondent assisted her with the students' behavioral problems and training. She reported respondent is skilled in his assessment of student behaviors, and takes a positive and patient approach to student behavior modification. She wrote that he is quick to attend to students' needs and is an asset in the classroom.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides in part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

“(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(3)(A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

[¶]...

“The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

2. Business and Professions Code section 4511 provides that the Board may deny a license if the applicant committed any act which, if committed by licensed psychiatric technician, would be grounds for disciplinary action.

3. Business and Professions Code section 4521 provides in part:

“The board may suspend or revoke a license issued under this chapter for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

...

(5) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(6) Be convicted of a criminal offense involving the falsification of records concerning prescription, possession, or consumption of any of the substances described in paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence of the conviction. The board may inquire into the circumstances

surrounding the commission of the crime in order to fix the degree of discipline.

...

(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline....”

4. Title 16, California Code of Regulations, section 2576.6 provides in part:

(b) A licensed psychiatric technician shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:

(4) Abstaining from chemical/substance abuse; and

...

(c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action.”

4. Cause to deny respondent’s application for a psychiatric technician license pursuant to Business and Professions Code sections 480, subdivision (a)(1), 4511, and 4521, subdivision (f), conviction of a crime substantially related to the qualifications, functions, and duties of a licensed psychiatric technician, was established by Finding 3 through 6

5. Cause to deny respondent’s application for a psychiatric technician license pursuant to Business and Professions Code sections 480, subdivision (a)(3)(A), 4511, and 4521, subdivision (a)(5), and Title 16, California Code of Regulations, section 2576.6, subdivisions (b)(4) and (c), in that respondent committed unprofessional conduct by using an alcoholic beverage in a manner that was dangerous to himself or others and failing to abstain from chemical substance abuse, was established by Findings 3 through 6 and 8.

6. Cause to deny respondent’s application for a psychiatric technician license pursuant to Business and Professions Code section 4521, subdivision (a)(6), conviction of a criminal offense involving the falsification of records, was not established.

7. Title 16, California Code of Regulations, section 2579 provides:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 4524 of the Business and Professions Code, the Board, in evaluating

the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

8. The evidence in light of these factors shows that respondent was convicted of three driving under the influence offenses, one in 2009, one in 2005, and one in 1995. Respondent just completed probation on his most recent, served time in custody under house arrest, completed the DUI program, and paid the fine. He also completed probation on his 2005 conviction. He committed his last offense about 39 months ago. The offenses themselves present no extraordinary factors: respondent's blood alcohol content was not excessively above the legal limit, there were no accidents or injuries to persons or property involved in respondent's drinking and driving, and his driving does not appear to have been particularly reckless or dangerous.

Respondent denied that he had an alcohol problem and beyond attending the required alcohol course, has not undertaken any efforts at rehabilitation. He testified he stopped drinking the day he was arrested on May 6, 2009, but he provided no evidence to support his testimony. The fact respondent was convicted of three DUI offenses over a 14 year period

suggests that he does have a problem with alcohol and it required more to address than a simple decision on his part not to drink anymore.

Respondent's evidence of rehabilitation consists solely of his work as a psychiatric technician assistant for the State of California for the last 24 years. He worked at Patton State Hospital for 12 years and has been at Lanterman for the last 12 years. He testified his employer knew about his convictions and there is no evidence that his employer ever took disciplinary action against him because of the convictions. Two of his co-workers are impressed with the quality of his work.

Title 16, California Code of Regulations, section 2579.10 incorporates the Board's Disciplinary Guidelines and they provide three possible penalties for alcohol-related convictions for a licensee: Revocation; revocation stayed with a three-year probation; and revocation stayed with a two-year probation. For an applicant, those penalties may be interpreted as denial of the application, issuance of the license with a three-year period of probation, and issuance of the license with a two-year period of probation. Respondent's lengthy and successful employment in state-operated mental health facilities in a position directly related to that of a licensed psychiatric technician suggests he may be entrusted with that license, but his three DUI convictions must be considered and addressed. Weighing all the evidence against the relevant factors for determining penalty, it is concluded that the Board's middle term is the most appropriate penalty for the violations found in this matter.

The question arises whether respondent should be required to undergo a physical evaluation, participate in a rehabilitation program, and undergo biological testing. Given the three DUI convictions and the absence of any evidence to corroborate respondent's claim that he no longer drinks, such requirements are necessary in order to adequately protect the public.

#### ORDER

The application of respondent Carlos Arturo Cazares, aka Carlos Munoz for a psychiatric technician's license is granted. However, upon issuance of the license, respondent's license shall be immediately revoked, the revocation is stayed, and respondent is placed on probation for a period of three (3) years on the following terms and conditions:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty



(30) days of the effective date of the Decision, unless the Board determines that fingerprints cards were previously submitted by the respondent to the Board.

Respondent shall also submit to the Board a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the Decision.

If respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

## 2. COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORT REQUIREMENTS

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of respondent's compliance with the Probation Program.

Upon successful completion of probation, respondent's license will be fully restored.

## 3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, respondent shall provide a list of all states and territories where he has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which he has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

## 4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within five (5) days, if he leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he resides or practices outside of California. Respondent shall provide written notice to the Board within five (5) days of any change of residency or practice.

Respondent shall notify the Board, in writing, within five (5) days, upon his return to California.

6. INTERVIEWS/MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify his employer of the probationary status of respondent's license. This notification to the respondent's current health care employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, if he is terminated or separated, regardless of cause, from any nursing or health care related employment

with a full explanation of the circumstances surrounding the termination or separation.

#### 8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

Respondent's continued employment at Accent Home Care, including work at the homes of patients, shall not constitute a violation of this condition of probation.

#### 9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, respondent shall obtain approval from the Board of the supervision provided to respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

#### 10. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, respondent shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

## 11. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the Board.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should respondent's license expire, by operation of law or otherwise, expire, upon renewal or reinstatement, respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

## 12. LICENSE SURRENDER

During probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A licensee who surrenders his license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or

One (1) year for a license surrendered for a mental or physical illness.

## 13. VIOLATION OF PROBATION

If respondent violates the conditions of his probation, the Board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license. If during probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

#### 14. EXAMINATION BY A PHYSICIAN

Within sixty (60) days of the effective date of the Decision, respondent shall submit to a physical examination by a physician of his choice who meets minimum criteria established by the Board. The physician must be licensed in California and Board certified in Family Practice, Internal Medicine or a related specialty. The purpose of this examination shall be to determine respondent's ability to perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician with a copy of the Board's Disciplinary Order prior to the examination. The cost of such examination shall be paid by the respondent.

Respondent shall cause the physician to submit to the Board a written medical report in a format acceptable to the Board. This report shall be submitted within ninety (90) days of the effective date of the Decision. If the examining physician finds that respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board, in writing within five (5) working days. The Board shall notify the respondent in writing of the examining physician's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation.

Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified the respondent. Respondent shall document compliance in the manner required by the Board.

#### 15. CHEMICAL DEPENDENCY SUPPORT & RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by the respondent with each written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

#### 16. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

17. Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

18. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the respondent's current employer.

Dated: August 6, 2012

A handwritten signature in cursive script, reading "Alan S. Meth", is written over a horizontal line.

ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 DESIREE TULLENERS  
Deputy Attorney General  
4 State Bar No. 157464  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2578  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. PT-2009-1445

13 **CARLOS ARTURO CAZARES**  
14 **aka CARLOS MUNOZ**  
**aka CARLOS ARTURO CAZARES**  
**MUNOZ**  
15 1211 W. Marshall Boulevard  
San Bernardino, CA 92405

**STATEMENT OF ISSUES**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Statement of Issues  
21 solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and  
22 Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about June 29, 2009, the Board of Vocational Nursing and Psychiatric  
24 Technicians (Board) received an application for a Psychiatric Technician License from Carlos  
25 Arturo Cazares, also known as Carlos Munoz and Carlos Arturo Cazares Munoz (Respondent).  
26 On or about May 4, 2009, Respondent certified under penalty of perjury as to the truthfulness of  
27 all statements, answers, and representations in the application. The Board denied the application  
28 on or about March 29, 2011.

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1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
2 of the business or profession for which the licensee's license was issued.

3 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
4 conviction following a plea of *nolo contendere*. Any action that a board is permitted to take  
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
7 made suspending the imposition of sentence, irrespective of a subsequent order under the  
8 provisions of Section 1203.4 of the Penal Code.”

9 6. Section 4511 provides, in pertinent part, that the Board may deny licensure if the  
10 applicant committed any act which, if committed by a licensed psychiatric technician, would be  
11 grounds for disciplinary action.

12 7. Section 4521 states, in pertinent part:

13 "The board may suspend or revoke a license issued under this chapter [the Psychiatric  
14 Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the following reasons:

15 (a) Unprofessional conduct, which includes but is not limited to any of the following:

16 . . . .

17 (5) Use any controlled substance as defined in Division 10 (commencing with Section  
18 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or  
19 alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or  
20 herself, any other person, or the public or to the extent that the use impairs his or her ability  
21 to conduct with safety to the public the practice authorized by his or her license.

22 (6) Be convicted of a criminal offense involving the falsification of records  
23 concerning prescription, possession, or consumption of any of the substances described in  
24 paragraphs (4) and (5), in which event the record of the conviction is conclusive evidence  
25 of the conviction. The board may inquire into the circumstances surrounding the  
26 commission of the crime in order to fix the degree of discipline.

27 . . . .

28 ///

1 (f) Conviction of any offense substantially related to the qualifications, functions, and  
2 duties of a psychiatric technician, in which event the record of the conviction shall be conclusive  
3 evidence of the conviction. The board may inquire into the circumstances surrounding the  
4 commission of the crime in order to fix the degree of discipline."

### 5 REGULATORY PROVISIONS

6 8. California Code of Regulations, title 16, section 2518.6 states, in pertinent part:

7 "(b) A licensed vocational nurse shall adhere to standards of the profession and shall  
8 incorporate ethical and behavioral standards of professional practice which include but are not  
9 limited to the following:

10 . . . .

11 (4) Abstaining from chemical/substance abuse."

12 . . . .

13 (c) A violation of this section constitutes unprofessional conduct for purposes of  
14 initiating disciplinary action."

15 9. California Code of Regulations, title 16, section 2578 states, in pertinent part:

16 "For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5  
17 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be  
18 considered to be substantially related to the qualifications, functions or duties of a licensed  
19 psychiatric technician if to a substantial degree it evidences present or potential unfitness of a  
20 licensed psychiatric technician to perform the functions authorized by his license in a manner  
21 consistent with the public health, safety, or welfare."

### 22 FIRST CAUSE FOR DENIAL OF APPLICATION

#### 23 *(Substantially Related Criminal Convictions)*

24 10. Respondent's application is subject to denial under sections 4511 and 480,  
25 subdivision (a)(1), in that, Respondent was convicted of crimes, as follows:

26 a. On or about August 4, 2009, after pleading guilty, Respondent was convicted of one  
27 misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the  
28 influence of alcohol or drugs] and one count of violating Vehicle Code section 14601.2,

1 subdivision (a) [driving while driving privileges are suspended or revoked] in the criminal  
2 proceeding entitled *The People of the State of California v. Carlos Munoz* (Super. Ct. San  
3 Bernardino County, 2009, No. TSB902691). The Court sentenced Respondent to serve 60 days  
4 in San Bernardino County jail, and ordered pronouncement of Judgment withheld and conditional  
5 and revocable release granted for a period of 36 months under certain terms and conditions.

6 b. The circumstances surrounding the conviction are that on or about May 6, 2009,  
7 during a traffic stop by the San Bernardino Sheriff's Department, Respondent was contacted.  
8 While speaking to Respondent, the officer detected an odor of an alcoholic beverage emitting  
9 from the vehicle's interior. Respondent was observed to have bloodshot and watery eyes. When  
10 asked if he had anything to drink prior to driving, Respondent stated, "No." When asked a  
11 second time if he had any alcohol to drink, Respondent admitted that he had six bottles of Corona  
12 prior to driving. While at the scene, Respondent submitted to a Preliminary Alcohol Screening  
13 Test (PAS) that resulted in a breath-alcohol content level of 0.12%. In addition, a computer  
14 check revealed that Respondent's driver's license was suspended for a prior conviction of driving  
15 under the influence of alcohol or drugs, with service needed effective March 25, 2009.  
16 Respondent was subsequently arrested for violating Vehicle Code section 23152, subdivision (a)  
17 [driving under the influence of alcohol or drugs] and Vehicle Code section 23152, subdivision (b)  
18 [driving while having 0.08% and more, by weight, of alcohol in his blood].

19 c. On or about March 25, 2005, after pleading guilty, Respondent was convicted of one  
20 misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the  
21 influence of drugs or alcohol] in the criminal proceeding entitled *The People of the State of*  
22 *California v. Carlos Arturo Munoz Cazares* (Super. Ct. San Bernardino County, 2005, No.  
23 BAM024865). The Court sentenced Respondent to serve 1 day in San Bernardino County jail,  
24 and placed him on 36 months probation under certain terms and conditions.

25 d. The circumstances surrounding the conviction are that on or about January 19, 2005,  
26 Respondent drove a vehicle under the influence of alcohol or drugs.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Denying the application of Respondent for a Psychiatric Technician License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: March 26, 2012



TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*